IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1263 OF 2005

WITH

WRIT PETITION NO1264 OF 2005

WRIT PETITION 1263/2005:

Indraprastha Co-op.Hsg. Soc. Ltd. ...Petitioner.
Versus
Mr.Suhas B.Kotkar & Anr. ...Respondents.
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WRIT PETITION 1264/2005:

Indraprastha Co-op.Hsg. Soc. Ltd. ...Petitioner.
Versus
Chhaya Suhas Kotkar & Anr. ...Respondents.
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Mr.Ketan A. Chothani for the Petitioner.
Mr. Sanjeev Singh for Respondent No.1.
Mr. P.M. Palshikar, AGP for Respondent No.2.
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CORAM : DR. D.Y. CHANDRACHUD, J.

May 2, 2005.

P.C.:

The Petitioner before the Court is a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies' Act, 1960. The Society consists of 18 members who are in

possession of residential flats and 10 members who have shops in the premises of the Society. The First Respondent is in occupation and possession of Flat No.6 and Shop No.7. The society recovers monthly outgoings under various heads from its members such as Municipal taxes, maintenance and service charges, towards sinking and repair funds, water taxes, parking charges and pest control contribution. Quarterly bills are issued by the society. Charges are levied by the society proportionately based on the area in the possession of each member and it is stated that this is based on the Municipal taxes actually levied by the Municipal Corporation. The society filed an application under Section 10 of the Act against the First Respondent for the recovery of outstanding dues of the society which had not been paid. The Deputy Registrar dismissed the application by an order dated 26th August 2002 which has been confirmed by the Divisional Joint Registrar on 20th September 2004.

2. The Society has annexed to each of the two Petitions, a statement of the outstandings that are due and payable in respect of the flat and the shop premises. In respect of the premises of the residential flat, a total outstanding which was due and payable as of 31st March 2005 is stated to be Rs.1,54,872/- of which an amount of Rs.93,513/- is the principal, whereas the balance is on account of interest. The society has given a detailed break

up, in accordance with pro rata contribution of Municipal taxes, maintenance charges, charges towards sinking fund, repair fund and parking charges. The interest has been computed separately at the rate of 21% per annum. In respect of the premises of the shop, the total amount which is due and payable is Rs.2,00,715/- comprising of a principal of Rs.1,24,315/- whereas the balance is on account of interest.

3. The statement which has been filed by the Society shows that an amount of Rs.41,246.40 has been paid by the First Respondent. The last payment appears to be on 30th April 2000 in the amount of Rs.21,636.90. The grievance of the First Respondent is that an amount of Rs.46,000/- which was paid by way of advance in 1999 has not been duly accounted for in the notice. Counsel appearing on behalf of the Petitioner submitted that the Petitioner is willing to give due credit to the First Respondents in respect of the aforesaid amount subject to due verification of the record of the Co-operative Society in regard to the actual payment having been made. In my view, the entire approach of the Deputy Registrar, and of the Divisional Joint Registrar is fallacious. A Co-operative Society cannot function if the members do not deposit dues of Municipal taxes, maintenance charges and other charges which are demanded from the members who are in occupation and possession. In my view, it would be appropriate to remand the matter

back to the Deputy Registrar, but to direct that in the meantime, the First Respondent must pay the principal amount of the outstandings which are claimed to be due and payable after giving due credit of the amount of Rs.46,000/- subject to due verification. The total principal amount that is stated to be due and payable in respect of the flat and the shop is Rs.2,17,828/-. After adjusting the amount of Rs.46,000/- which according to the First Respondents, they are entitled to receive credit for, the balance which is due and payable is Rs.1,78,828/-. The First Respondents to these two petitions are directed to deposit the aforesaid amount with the Petitioner in six equal monthly installments. The first five installments shall be in the amount of Rs.30,000/- each to be paid commencing from 7th May 2005 while the installment for the succeeding months shall be paid on or before 7th day of each month. The last installment shall be of the balance which is due and payable. The impugned orders of the Deputy Registrar, and of the Divisional Joint Registrar respectively dated 26th August 2002 and 20th September 2004 are quashed and set aside. Upon the deposit as directed by the First Respondent being made, the Deputy Registrar, Co-operative Societies shall after notice to the parties take steps to verify the amounts which have been claimed by the Co-operative Society. The Co-operative Society shall produce all its bills and records in respect of the demand that has been made. In the event that the amount which has been paid by the First

Respondent is in excess of the amount which is due and payable, the surplus, if any, shall be adjusted against the payment to be made on account of future maintenance bills. In the meantime, until the Deputy Registrar, decides the matter, the First Respondents shall continue to pay the monthly maintenance bills from April 2005 subject to due verification by the Deputy Registrar. The liability an account of interest shall be adjudicated upon by the Deputy Registrar on remand. The petitions are accordingly disposed of. No order as to costs.

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